HOUSE DOCKET, NO. 2309 FILED ON: 2/18/2011

# HOUSE . . . . . No. 3416

The Commonwealth of Massachusetts

PRESENTED BY:

***Carolyn C. Dykema***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to protection of open space.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *Frank I. Smizik* | *15th Norfolk* |
| *Jennifer E. Benson* | *37th Middlesex* |
| *Denise Provost* | *27th Middlesex* |
| *Chris Walsh* | *6th Middlesex* |

HOUSE DOCKET, NO. 2309 FILED ON: 2/18/2011

# HOUSE . . . . . No. 3416

By Ms. Dykema of Holliston, a petition (accompanied by bill, House, No. 3416) of Frank I. Smizik and others relative to the sale or conversion of certain tax exempt property. Revenue.

## The Commonwealth of Massachusetts

An Act relative to protection of open space.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. The General Laws are hereby amended by inserting, after chapter 61B, the following chapter:-

CHAPTER 61C

SALE OR CONVERSION OF TAX-EXEMPT PROPERTY

Section 1. All privately owned real property which is, by-right, exempt from property taxation for 2 or more years due to non-profit status, shall not be sold for, or converted to, residential, industrial or commercial use while so exempted or within 1 year after that time, unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, such other use.

Any notice of intent to sell for such other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

23 For the purposes of this chapter, a boa fide offer to purchase shall mean a good faith
24 offer, not dependent upon potential changes to current zoning or conditions or contingencies
25 relating to the potential for, or the potential extent of, subdivision of the property for residential
26 use or the potential for, or the potential extent of development of the property for industrial or
27 commercial use, made by a party unaffiliated with the land-owner for a fixed consideration
28 payable upon delivery of the deed.

29 Any notice of intent to convert to other use shall be accompanied by a statement of intent
30 to convert, a statement of proposed use of such land, the location and acreage of land as shown
31 on a map drawn at the scale of the assessors map in the city or town in which the land is situated,
32 the name, address and telephone number of the landowner and the landowner's attorney, if any.

33 The notice of intent to sell or convert shall be sent by the landowner by certified mail or
34 hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in
35 the case of either a city or a town, to its board of assessors, to its planning board and
36 conservation commission, if any.

37 A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell
38 or convert shall be conclusive evidence that the landowner has mailed the notice in the manner
39 and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to
40 which it relates.

41 The notice of intent to sell or convert shall be considered to have been duly mailed if
42 addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to
43 the planning board and conservation commission if addressed to them directly; to the state
44 forester if addressed to the commissioner of the department of conservation and recreation and to
45 the assessors if addressed to them directly.

46 If the notice of intent to sell or convert does not contain all of the material as described
47 above, then the town or city, within 30 days after receipt, shall notify the landowner in writing
48 that notice is insufficient and does not comply.

49 For a period of 120 days after the day following the latest date of deposit in the United
50 States mail of any notice which complies with this section, the city or town shall have, in the
51 case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

52 In the case of intended or determined conversion not involving sale, the municipality
53 shall have an option to purchase the land at full and fair market value to be determined by an
54 impartial appraisal performed by a certified appraiser hired at the expense of the municipality or
55 its assignee, the original appraisal to be completed and delivered to the landowner within 30 days
56 after the notice of conversion to the municipality. In the event that the landowner is dissatisfied
57 with the original appraisal, the landowner may, at the landowner's expense contract for a second
58 appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after

59 completion of the second appraisal, the parties cannot agree on a consideration, the parties will
60 contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne
61 equally by both parties. The third appraisal shall be delivered to both parties within 90 days after
62 the notice of conversion to the municipality and shall be the final determination of consideration.
63 Upon agreement of a consideration, the city or town shall then have 120 days to exercise its
64 option. During the appraisal process, the landowner may revoke the intent to convert at any time
65 and with no recourse to either party.

66 The option may be exercised only after a public hearing followed by written notice
67 signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the
68 address that is specified in the notice of intent. Notice of the public hearing shall be given in
69 accordance with section 23B of chapter 39.

70 The notice of exercise shall also be recorded at the registry of deeds and shall contain the
71 name of the record owner of the land and description of the premises adequate for identification
72 of them.

73 The notice to the landowner of the city or town's election to exercise its option shall be
74 accompanied by a proposed purchase and sale contract or other agreement between the city or
75 town and the landowner which, if executed, shall be fulfilled within a period of not more than 90
76 days after the date the contract or agreement, endorsed by the landowner, is returned by certified
77 mail to the mayor or board of selectmen, or upon expiration of any extended period that the
78 landowner has agreed to in writing, whichever is later.

79 At the public hearing or a further public hearing, the city or town may assign its option to
80 a nonprofit conservation organization or to the commonwealth or any of its political subdivisions
81 under the terms and conditions that the mayor or board of selectmen may consider appropriate.
82 Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

83 If the first refusal option has been assigned to a nonprofit conservation organization or to
84 the commonwealth or any of its political subdivisions as provided in this section, the mayor or
85 board of selectmen shall provide written notice of assignment to the landowner.

86 The notice of assignment shall state the name and address of the organization or agency
87 of the commonwealth which will exercise the option in addition to the terms and conditions of
88 the assignment. The notice of assignment shall be recorded with the registry of deeds.

89 Failure to record either the notice of exercise or the notice of assignment within the 120
90 day period shall be conclusive evidence that the city or town has not exercised its option.

91 If the option has been assigned to a nonprofit conservation organization or to the
92 commonwealth or any of its political subdivisions, the option may be exercised by the assignee

93 only by written notice to the landowner signed by the assignee, mailed to the landowner by
94 certified mail at the address that is specified in the notice of intent.

95 The notice of exercise shall also be recorded with the registry of deeds and shall contain
96 the name of the record owner of the land and description of the premises adequate for
97 identification of them.

98 The notice of exercise to the landowner shall be accompanied by a proposed purchase
99 and sale contract or other agreement between the assignee and landowner which, if executed,
100 shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended
101 period that the landowner has agreed to in writing, from the date the contract or agreement,
102 endorsed by the landowner, is returned by certified mail to the assignee.

103 During the 120 day period, the city or town or its assignees, shall have the right, at
104 reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying
105 and inspecting said land, including but not limited to soil testing for purposes of Title V and the
106 taking of water samples.

107 The city or town or its assignee shall have all rights assigned to the buyer in the purchase
108 and sales agreement contained in the notice of intent.

109 If the city or town elects not to exercise the option, and not to assign its right to exercise
110 the option, the city or town shall send written notice of nonexercise signed by the mayor or board
111 of selectmen to the landowner by certified mail at the address that is specified in the notice of
112 intent. The notice of nonexercise shall contain the name of the owner of record of the land and
113 description of the premises adequate for identification of them, and shall be recorded with the
114 registry of deeds.

115 No sale or conversion of the land shall be consummated until the option period has
116 expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of
117 the land shall be consummated if the terms of the sale differ in any material way from the terms
118 of the purchase and sale agreement which accompanied the bona fide offer to purchase as
119 described in the notice of intent to sell except as provided herein.

120 This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage
121 shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the
122 sale to the parties in the manner described in this section for notice of intent to sell or convert,
123 and the giving of that notice may be established by an affidavit as described in this section.